

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

PRINCIPAL BENCH

(IB)-519(PB)/2017

IN THE MATTER OF:

Globe Express Services Pvt. Ltd.

.... Applicant/Petitioner

Vs.

M/s. AGI Cargo Pvt. Ltd.

.... Respondent

Order under Sections 8 & 9 of Insolvency & Bankruptcy Code, 2016

Order delivered on 13.02.2018

Coram:

CHIEF JUSTICE (RTD.) M.M.KUMAR

Hon'ble President

Sh. S.K. Mohapatra,

Hon'ble Member (T)

For the Petitioner/Applicant :

ORDER

No one has put in appearance to clarify various issues which has confronted us while dictating the order. The issues are as follows:-

It is seen from the record that one Nitin Kapoor has filed affidavit verifying the application as an authorised representative of the applicant company. However, at page 2 of the application it is stated that Mr. Nitin Kapoor is the Country Head of respondent Company M/s AGI Cargo Private Limited. Similarly, at page 13 of the application Nitin Kapoor has signed the application as authorized representative of the corporate debtor. Under proviso to sub-section (5) of Section 9 of the Code the applicant is given opportunity to rectify the defect.

It is further seen that as per Form-5 the applicant was required to enclose documents/records and evidence in proof of the default. However, in the present application the applicant has only enclosed the invoices and a banker's certificate. The bank certificate shows that three cheques were submitted by the respondent company which could not be encashed. In this regard there is no pleading in the application. It is not clear whether any payment has been made by the respondent. The applicant neither has enclosed the ledger account nor any bank



account statement in support of the transactions made between the parties. No agreement nor any purchase order has been enclosed. It appears that the invoices have not been acknowledged by the respondent company. There is no disclosure of date of default as required in the form. The onus to proof the claim lies on the applicant. However, under proviso to sub-section (5) of Section 9 of the Code the applicant is afforded an opportunity to substantiate its claim as made in the application.

A copy of this order be communicated to the learned counsel for the petitioner.

List for further consideration on 27.02.2018.

Sdl-

(M.M.KUMAR)
PRESIDENT

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(S.K. MOHAPATRA)
MEMBER(TECHNICAL)

13.02.2018
Vineet